



Canada-United States Law Journal

Volume 16 | Issue

Article 40

January 1990

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Recommended Citation

Henry T. King Jr., *Closing Remarks and Discussion*, 16 Can.-U.S. L.J. 329 (1990)

Available at: <https://scholarlycommons.law.case.edu/cuslj/vol16/iss/40>

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Closing Remarks and Discussion

Henry T. King, Jr.

I would like to take this opportunity to discuss some ideas for future programs of the Canada-United States Law Institute, and we will certainly be glad to receive any suggestions.

One possible program could examine how transborder dispute resolution procedures operate under the maturing Free Trade Agreement. The program could include not only the use of dispute settlement procedures in the trade area, but also the use of dispute settlement procedures in other areas, such as the environment and the fishing industry. We could also examine how we handle labor, technology, natural resources and joint venture disputes in both countries.

Another dimension would be to consider the differences in how civil actions are handled in both the United States and Canada. The program would include a discussion of not only the causes of action, but also the various types of remedies available. We would compare the Canada-U.S. dispute resolution procedures with those of countries, such as Japan and West Germany, where the context is quite different. We would examine litigation as well as arbitration and other alternate dispute resolution procedures because, as Stephen Schlossberg pointed out, there is a need for institutionalizing some of these mechanisms. The more we institutionalize the solutions to these problems, the better off we will be.

* * *

COMMENT, Mr. Edwards: With respect to recognition of judgments, the standards in Canada and the United States are quite different. In Canada, there are standards for the recognition of judgments between provinces, however, enforcement of judgments from U.S. courts vary considerably among the different provinces.

COMMENT, Professor King: This is an important area. Over-litigation is a cost factor that decreases U.S. competitiveness. When compared with Japan, where litigation is not as prevalent nor as costly, the United States finds itself at a competitive disadvantage.

COMMENT, Mr. Edwards: We could also discuss how we rate against our competitors and the effects on such competition. Depending on the progress of the Mexican initiative, we can examine competition in the Canada-U.S.-Mexico context. This would follow Stephen Schlossberg's suggestion of taking a regional approach to the inquiry.

COMMENT, Mr. Morici: This would be an excellent approach because with services and projects much more is inevitable than people

might believe. For example, the thrust of negotiations between Ottawa and Washington is multidimensional. So, if the United States does negotiate with Mexico, it must be aware of the impact on Canada. Issues such as product standards, foreign investment regulations and energy become much more complicated in a tri-party context.

Although Mexico is not as well established as Canada and the United States, it is large enough to be given some priority. Simply because we do not always accept their goods, we must still accept their people. Since Mexico has an impact on our labor market, Canada is not immune from this factor. We need to begin thinking about these problems even before the agreement is reached.

COMMENT, *Professor King*: That is what we did with the Free Trade Agreement. Our 1984 conference on Sectoral Integration was one of the first conferences which ever held mandatory the prospective Free Trade Agreement. Although at that time we believed that only certain sectors could be united, our Institute proceedings became part of the data banks the Canadian representatives used to negotiate the Agreement. We could do something similar as a precursor to the Canada-U.S.-Mexico negotiations.

COMMENT, *Mr. Harwood*: It would be interesting to discuss the establishment of institutions covering Canadian and U.S. patents and trademarks. We could also examine the standards on food and drug approval.

COMMENT, *Professor King*: A joint institution on patents could be quite useful. Often those working in the patent area do not stress the desirability of uniformity, however, a joint Canada-U.S. patent office might be useful. Since technology is not included in the scope of the Free Trade Agreement, there are no intellectual property provisions either. It would be interesting to see what a conference in this area would produce.

COMMENT, *Mr. Marlais*: In addition, other areas not included in the Free Trade Agreement, such as transportation and communications, could be examined retrospectively. We could also discuss the possibility of a multi-lateral approach to the adoption of a North American common market.

COMMENT, *Professor King*: As Mr. Morici mentioned, it is important to consider timing when planning these conferences. If we discussed the creation of a North American common market at our next conference, we could have considerable input in the actual process. However, we must also consider which topics would blend into a good conference.

COMMENT, *Mr. Reifsnyder*: Since today is Earth Day, I am reminded that environmental issues are exerting tremendous influence on businesses and populations worldwide. Yesterday, Mr. Warrian mentioned the Clean Air Act and labor's approach to environmental problems. Last night, Mr. Macdonald stated that the environment is in-

creasingly a concern of the business community; I wish to add that environmental technology is also an opportunity. We could discuss these issues in a session called, "Environmental Law and Policy in the Canada-U.S. Context." An environmental conference could address a variety of issues, including acid rain, from both a public and private sector standpoint.

Also, beginning this year the United Nations is making the environment a top priority. Currently, the reports of our director and the ILO are being prepared for the June conference concerning what business, labor and government can do about environmental issues. Similar high level documents from the ILO and the United Nations environmental program will be forthcoming.

The Commission on Refugees will also be addressing the environment and I am told that the pollution problems in Eastern Europe are tremendous. I know a professor from Wayne State University who is working with the Czechoslovakian industrial pollution problem. He could present a practical, pragmatic approach to environmental issues. A lot of material would be available for this type of conference.

COMMENT, *Professor King*: That is right. Our main consideration is covering areas that other conferences are not addressing.

COMMENT, *Mr. Delay*: Secretary of Transportation, Mr. Skinner, has stated that it is time to explore transportation alternatives that preserve the environment and enhance productivity. He has proposed a comprehensive national policy that would implement these objectives. We could examine these issues in our next conference.

COMMENT, *Professor King*: That is an interesting idea. I have always enjoyed traveling by rail. Unfortunately, this mode of transportation is no longer viable in the United States and Canada, but it is refreshing to travel by train in Europe.

COMMENT, *Mr. Harwood*: Since Canada and the United States may be ratifying a new tax treaty next year, we could examine its potential provisions. Also, a discussion on the St. Lawrence Seaway might be interesting. The program would include the passivity of the locks and the incompatibility of shipping with seaway maintenance.

COMMENT, *Professor King*: That is an interesting idea. Certainly shippers, consumers and large cargo distributors are interested in this area. However, we need to ensure that a large enough audience exists for this type of conference.

COMMENT, *Mr. Edwards*: We could consider the banking, finance and monetary policies between Canada and the United States in our next conference.

COMMENT, *Professor King*: A conference in this area would assure an audience of U.S. and Canadian bankers. We try to create conferences that are intensive, creative and unique. We will consider all your

ideas in terms of constituency, breadth of coverage, appropriateness, timeliness and availability of speakers.

Several years ago, Richard Edwards suggested human resources. We do not always consider a topic in the year after it was suggested, but we keep it in mind for future conferences, as human resources was taken up this year.

Before I close, I would like to thank those who made this conference possible. We could not have done it without them. I particularly want to thank Kami Mohammed who did the research for the development of this wonderful book. She engaged in exhaustive reading, and also did a very good job in working with me on the briefing book. Kami, we thank you very much for your efforts, and we could not have done it without you. Shelly Boone, our court reporter, we thank you very much for all your assistance. And certainly, above all, Patti Hujarski.

A word about Patti. She has played a critical role in the conference. When things get complicated, as they sometimes do when we have changes in speakers, she keeps my spirits up. She is always upbeat and she is always in good spirits. She has done a wonderful job in coordinating these conferences. I cannot tell you how many details she has taken care of. As I say, her work will live long in my memory.

Without further ado, I declare this conference adjourned.